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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ELECTRONIC FRONTIER FOUNDATION,)	NO. C 07-5278 EMC
)	
Plaintiff,)	PROOF OF SERVICE DECLARATION
)	OF MARCIA HOFMANN IN SUPPORT
v.)	OF APPLICATION FOR ORDER
)	SHORTENING TIME
OFFICE OF THE DIRECTOR OF NATIONAL)	
INTELLIGENCE,)	
)	Courtroom:
Defendant.)	
)	
)	
)	

1. I am an attorney of record for Plaintiff Electronic Frontier Foundation ("EFF") in this matter and a member in good standing of the California State Bar, and am admitted to practice before this Court. I have personal knowledge of the matters stated in this declaration. If called upon to do so, I am competent to testify to all matters set forth herein.

1 2. This declaration is submitted in support of EFF's Application for an Order Shortening
2 Time to have its Motion for a Preliminary Injunction heard by this Court on November 20, 2007, or
3 as soon thereafter as practicable.

4 3. On October 22, 2007, I phoned Andrew I. Warden, Trial Attorney at the Department
5 of Justice, and informed him that EFF had filed the complaint in this matter on October 17, 2007.
6 Mr. Warden is counsel in a similar but unrelated lawsuit between EFF and the Department of
7 Justice currently pending in the District Court for the District of Columbia, *Electronic Frontier*
8 *Foundation v. Dep't of Justice*, No. 07-1732 (D.D.C. filed Sept. 27, 2007). Mr. Warden told me
9 that he anticipated that he would be counsel for Defendant in this action and had already obtained a
10 copy of the October 17, 2007 complaint.

11 4. During this conversation, I told Mr. Warden that EFF wanted to explore the possibility
12 of negotiating a processing schedule for EFF's Freedom of Information Act ("FOIA") requests to
13 eliminate the need for further action in this case. I explained, however, that legislation had been
14 introduced and approved on October 18, 2007 by the Senate Select Committee on Intelligence that
15 is closely related to the subject matter of the records underlying this case. I told Mr. Warden that
16 this development has significantly increased the urgency for the public to obtain the records sought
17 from ODNI, and that EFF would consider seeking preliminary injunctive relief in the absence of an
18 agreement to process EFF's requests in a timely manner. Mr. Warden told me he would consult
19 with his client.

20 5. On October 24, 2007, Leticia Perez, Legal Secretary for EFF, served copies of the
21 complaint, summonses, and orders of this Court via certified mail on Defendant ODNI, as well as
22 the United States Attorney General and United States Attorney for the Northern District of
23 California, as required by Fed. R. Civ. P. 4(i)(1)(a)-(c). Copies of the receipts for these mailings
24 are attached hereto as Exhibit 1. United States Postal Service records indicate that United States
25 Attorney General and United States Attorney for the Northern District of California have received
26 and accepted the service mailings, though Defendant ODNI's package has not yet been delivered.
27 Copies of these records are attached hereto as Exhibit 2.

28 6. On October 25, 2007, I sent Mr. Warden an email reiterating EFF's willingness to

1 discuss a mutually agreeable production schedule for its FOIA requests. In light of the legislation
2 pending in the Senate, however, I told Mr. Warden that EFF intended to seek preliminary relief in
3 this case if the parties could not reach an agreement on the processing of EFF's requests by
4 Monday, October 29, 2007. I received no response to this email.

5 7. On October 26, 2007, I conferred with Mr. Warden by phone and informed him of my
6 intention to move for a preliminary injunction and to seek an order for shortened time to hear the
7 motion if EFF and ODNI had not reached an agreement by Monday, October 29, 2007. During
8 that conversation, Mr. Warden did not agree to a hearing of the Motion for Preliminary Injunction
9 on the schedule proposed by EFF in its Application for an Order to Shorten Time, and said that
10 ODNI would decide whether to oppose the application after it had an opportunity to evaluate the
11 underlying motion. Mr. Warden also informed me that ODNI intends to decline to proceed before
12 Magistrate Judge Chen and request reassignment of this case to an Article III judge. I have had no
13 further discussions with Mr. Warden.

14 8. I certify that today I served a copy of EFF's Motion for Preliminary Injunction,
15 Application for an Order Shortening Time, and the declarations and exhibits supporting each filing
16 on Defendant's attorney via email and FedEx Overnight.

17 I declare under penalty of perjury of the laws of the State of California that the foregoing is
18 true and correct to the best of my knowledge and belief. Executed October 29, 2007 in San
19 Francisco, California.

20 By _____/s/
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